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SUBJECT: AMBASSADOR MEETS DTI MINISTER ON FTA AND BEE

REF: (A) STATE 223549, (B) PRETORIA 4532

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1. (SBU) Summary. Ambassador Frazer discussed the Free Trade Agreement (FTA) negotiations and raised U.S. concerns about Black Economic Empowerment (BEE) in her meeting with Department of Trade and Industry (DTI) Minister Mpaphlwa on October 19. She underscored U.S. goals for a comprehensive FTA that covers all issues. She explained an "early harvest" would not work. The Minister was receptive to the Ambassador's call for senior leadership, and suggested we "cascade up to the political level and give some fresh political direction on what we agree." Drawing on demarche points in refTel A, the Ambassador noted support for BEE but raised continuing concerns about clarity in compliance with charters and equity transfer issues. The Minister acknowledged that the government would have to address these issues, and referred to Amcham's memo expressing concerns about equity. He hopes to issue the BEE Codes of Good Practice and appoint the members to the Advisory Council on BEE to the President before the end of the year. End Summary.

U.S.-SACU FTA

2. (SBU) Ambassador Frazer met with DTI Minister Mandisi Mpahlwa at his office on October 21. She underscored the U.S. perspective on the FTA as a comprehensive agreement that would expand trade and investment, and make AGOA benefits permanent for the Southern African Customs Union (SACU). It would have to include all Phase 1 and Phase 2 (e.g., procurement, intellectual property) issues. An "early harvest" would not work with our Congress, private sector, or legislation. There was room for flexibility, for example in the phasing in of the provisions of the FTA. She noted that after 18 months of negotiations there is still no agreement on even a single line of text. She called for senior leadership by the Minister working with USTR Ambassador Zoellick as a way to move the process forward. She also noted that one problem has been that publicly the U.S. side has been making statements that are positive, while the SACU side has been saying things that are negative, adding, "It doesn't help."

3. (SBU) Minister Mpahlwa was cordial throughout the 45-minute meeting. He referred positively to the contacts between DTI Director General Alistair Ruiters and Deputy USTR Josette Shiner. He noted the DG had mentioned to him the problem about statements made publicly by South Africans, including one in New York and some things that Iqbal (Sharma) has said. "I take your point very well." As for the status of the negotiations, the Minister got the sense that at some stage it became too difficult in the negotiations because of simply bad chemistry between our negotiators or because the U.S. and SACU perspectives on the FTA were not the same.

4. (SBU) At the same time, the Minister noted SACU's lack of capacity compared to the United States and the "intensity" of the WTO negotiations as other factors. He lamented that he had not been able to meet with Ambassador Zoellick to have a bilateral on the FTA during the multilateral meetings in Mauritius (ACP) and Brazil (UNCTAD) where the focus was on other issues. Having lost time, he echoed the Ambassador by suggesting the need "to cascade up to the political level and give some fresh political direction on what we agree."

5. (SBU) Victor Mashabela of the Americas desk added that both sides were far apart on perspective and philosophy. He referred to the difficulties in negotiating the terms of reference, particularly on such issues as SACU's insistence on asymmetry and not going beyond the WTO. Thus, it was not too surprising that it became difficult. (Comment: the Minister himself did not comment on the substance of the

SACU perspective.)

16. (SBU) The Ambassador reiterated the need to go to a higher political level in order to find commonality on principles, given that the negotiations were bogged down in set positions. She suggested that after the elections the United States and SACU meet at the political level to find a way forward. The Minister was uncertain how to proceed but was receptive to the idea, and agreed to touch base with the Ambassador after the elections and share expectations. He noted there would be a SACU meeting on December 9.

Black Economic Empowerment (BEE)

17. (SBU) The Ambassador drew on reftel talking points on Black Economic Empowerment. She explained that U.S. companies are committed to BEE and noted their successful efforts in broad based empowerment activities. At the same time, they need clarity in understanding how to comply with BEE legislation and charters. The main concern is equity ownership and uncertainty about requirements, such as how scorecards and codes of good practice will apply. A big issue for U.S. companies is to be able to offset equity requirements with other areas in scorecard. For some companies, sharing equity would be very difficult because of corporate law, policy, and shareholders. There were also questions about having to comply with different charters. Companies that operate across different sectors wonder whether they have to deal with multiple charters or just one and ask to whom do they answer. She was raising these concerns and questions with the Minister because DTI is the focal point for implementation of BEE.

18. (SBU) Minister Mpahlwa thanked the Ambassador and acknowledged that the government would have to address these issues. He noted that when he spoke at the American Chamber of Commerce breakfast a few weeks ago (reftel B) that "clearly equity is a concern." He also referred to a memorandum on BEE issues that Amcham gave him and their very deep concerns about equity, especially in the proposed ICT (information, communications, technology) charter.

19. (SBU) The Minister referred to the President's Advisory Council on the Information Society, which includes the CEOs of the biggest companies, such as Hewlett Packard, Oracle, and Microsoft. He said President Mbeki said he gave them the commitment "that we will deal with their issues and concerns." The Minister said it would have to be an accommodating approach in dealing with these issues. He underscored that "we are alive to these issues."

110. (SBU) The Minister also elaborated on differences in the process of developing the ICT Charter compared to the approach they had in Financial Services Charter. One disadvantage is that in the Financial Service Charter, there was a reference group composed of three people representing the President's Office, DTI, and the National Treasury. They could interact in the process and help for a smoother process. Such a group does not exist for the ICT charter. Moreover, the proposed ICT charter has not yet been brought to DTI.

111. (SBU) Minister Mpahlwa said there were "many angles" about BEE that are coming to the government's attention. In particular, he noted the Italian Ambassador had met him the day before and raised issues related to a series of existing bilateral agreements that protect investments and questions about whether these agreements could be violated by such things as the Mining Act and charter. He said, "We have to look at those angles."

112. (SBU) The Minister committed generally on the BEE points raised by the Ambassador saying, "As the lead, I will see to it that these issues will be brought to the attention of the Cabinet, so at least Cabinet can be apprised of what some of the issues are."

113. (SBU) The Minister also briefly discussed the scorecard and the Codes of Good Practice, which he said DTI intends to issue soon in order to provide some common base to evaluate the empowerment process. The work on the codes is pretty much done. Those in phase one will come out soon while those in phase two will come out much later. He underlined that the government is proposing a broad approach to empowerment that is not just about equity. He said equity is only a small part of it, and also important are such areas as enterprise development and human resource development.

114. (SBU) The Minister also referred to upcoming appointments to the Advisory Council on BEE to the President. While he expects criticism regardless of who is on the Council, he said they would need solid people who will inspire confidence in the broad based aspects of

empowerment and can engage on these issues. There will be four ministers, representing government, as well as private sector representation, but he said it should not just be big players from Gauteng province and Johannesburg. There could also be representatives from academia, the NGO community, and unions. He hopes to have the appointments done before the end of the year.

FRAZER